



City of Chicago



SO2017-3911

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 5/24/2017

Sponsor(s): O'Shea (19)
Harris (8)
Scott, Jr. (24)
Laurino (39)
Dowell (3)
Thompson (11)
Moreno (1)
Napolitano (41)

Type: Ordinance

Title: Amendment of Municipal Code Sections 4-6-310 and 4-6-320 and repeal of Chapter 4-92 regarding massage establishments and massage services

Committee(s) Assignment: Committee on License and Consumer Protection

SUBSTITUTE
ORDINANCE

02017-3911

SECTION 1. Section 4-6-10 of the Municipal Code of Chicago is hereby amended by deleting the struck-through text and inserting the underscored text, as follows:

4-6-010 Regulated business license.

(a) A regulated business license shall be required for the business activities set forth in this chapter. A separate license shall be required for each separate business location.

(b) The terms defined in Section 4-4-005, as well as the general licensing provisions set forth in Chapter 4-4 shall apply to all Chapter 4-6 licenses.

(c) Business activities requiring a regulated business license under this chapter shall include the following: (1) health club; (2) clothing alteration; (3) laundry service; (4) residential real estate developer; (5) tattooing, body piercing or tanning facility; (6) day labor agency; (7) adult family care center; (8) assisted living establishment; (9) long-term care facility; (10) adult family care home; (11) automatic amusement operator; (12) private scavenger; (13) secondhand dealer in children's clothing and children's products only; (14) junk peddler; (15) debt collectors; (16) hospital; (17) hotel; (18) board-up company; (19) dry cleaner; (20) hazardous materials; (21) single-room occupancy buildings; (22) booting of motor vehicles; (23) immigration assistance; (24) expediter company; (25) expediter/natural person; (26) home occupation; (27) home repair; (28) bed-and-breakfast establishment; (29) vacation rentals; ~~and~~ (30) pharmaceutical representative; and (31) massage establishments and massage services.

SECTION 2. Chapter 4-92 is hereby repealed in its entirety.

SECTION 3. Section 4-5-010 of the Municipal Code of Chicago is hereby amended by deleting the struck-through text and inserting the underscored text, as follows:

(Omitted text is unaffected by this ordinance)

(24) Massage establishment (4-92 4-6-320).....\$550.00

(Omitted text is unaffected by this ordinance)

SECTION 4. Chapter 4-6 is hereby amended by inserting a new Article XXXII, as follows:

ARTICLE XXXII. MASSAGE ESTABLISHMENTS AND MASSAGE SERVICES (4-6-320 et seq.)

4-6-320 **Massage establishments and massage services.**

(a) *Definitions.* As used in this article:

“Commissioner” means the Commissioner of the Department of Business Affairs and Consumer Protection, or the Commissioner’s designee.

“Department” means the Department of Business Affairs and Consumer Protection.

“Licensee” means the operator of a massage establishment.

“Massage” means a system of structured palpation or movement of the soft tissue of the body, as defined by the Illinois Massage Licensing Act, 225 ILCS 57/10. For purposes of this article, “massage” does not include a foot or chair massage performed while the recipient is fully clothed.

“Massage establishment” means any place of business that advertises or offers massage services or where any person, for any consideration whatever, engages in the practice of massage as defined above, but does not include any hospitals, nursing homes, facilities or offices at which a health care worker duly licensed by the State of Illinois provides, on an ongoing basis, professional health services to individuals, including but not limited to as services permitted by the Illinois Occupational Therapy Practice Act, 225 ILCS 75/1, et seq.; the Illinois Physical Therapy Act, 225 ILCS 90/1, et seq.; the Medical Practice Act, 225 ILCS 60/1 et seq.; or the Illinois Naprapathic Practice Act, 225 ILCS 63/1, et seq.

“Massage therapist” means any person who, for any consideration whatever, engages in the practice of massage as above defined, and who is subject to regulation by the Illinois Department of Finance and Professional Regulation under the Illinois Massage Licensing Act, 225 ILCS 57.

“Person” has the same meaning as ascribed to that term in section 1-4-090(e).

“Sexual or genital area” of any person shall include the male or female genitals, pubic area, anus, or perineum of any person, or the vulva or breasts of a female.

(b) *Application.*

(1) Procedure.

Every applicant for a license to maintain, operate or conduct a massage establishment shall file an application, under oath, with the Department. The Department shall advise the applicant in writing as to whether the application has been granted or denied. If the application is denied or held for further investigation, the Department shall advise the applicant in writing of the reason for such denial or hold.

The failure or refusal of the applicant to promptly give any information relevant to the investigation of the application, or the submission of false, misleading or incomplete information on the application, or the refusal or failure of applicant to appear at any reasonable time and place for examination under oath regarding said application, or the refusal of applicant to submit to or cooperate with any inspection required under this Code, shall be grounds for denial of the application.

(2) Application contents.

The application for a license to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place and facilities thereof. An application for such a license shall be made in conformity with the general requirements of this Code relating to license. The application shall be signed under oath by the owner of the business for which a license is sought. If the owner is a corporation, the application shall be signed by an authorized officer of the corporation. If the owner is a partnership, the application shall be signed by a partner.

In addition thereto, any applicant for a license, and each partner or limited partner of an applicant, if a partnership applicant, and each officer and director of a corporate applicant and any stockholder of a corporate applicant holding more than five percent of the stock of the corporate applicant, shall furnish the following information:

(A) written proof that the applicant, and any other person involved, directly or indirectly, in the massage establishment business, with the exception of massage therapist(s) licensed by the Illinois Department of Financial and Professional Regulation, is at least 18 years of age;

(B) the business, occupation, or employment of each applicant for the three years immediately preceding the date of application;

(C) the previous experience of the applicant in massage or similar business;

(D) whether the applicant has had any license denied, revoked or suspended in the City of Chicago or any other state or city for a massage establishment, the reason therefor, and the business activity or occupation of the applicant subsequent to such suspension, revocation or denial;

(E) . (i) any conviction, forfeiture of bond, or plea of nolo contendere upon any criminal violation at any time; or (ii) any municipal ordinance violation (except minor traffic violations), within a five year period;

(F) if the applicant is a corporation, or a partner of any partnership is a corporation then the names of the corporation shall be set forth exactly as shown in the articles, together with the state of incorporation and proof of authority to do business in the State of Illinois;

(G) each applicant's current residential telephone number; and

(H) the name and address of the owner of the premises. If the premises are leased: (a) a copy of the lease; (b) the name, address and telephone number of the owner of the premises, including the name and address of the beneficiary if title to the premises is held by a person as trustee and if known to the applicant; (c) the name, address and telephone number of the manager of the premises.

If a change in any information required under this section occurs at any time during a license period, the licensee shall file statement, executed in the same manner as an application, indicating the nature and effective date of the change. The supplemental statement shall be filed within ten days after the change takes effect. The Commissioner shall take measures to prevent disclosure of information required under this section and not subject to disclosure under the Illinois Freedom of Information Act to persons outside the government.

(3) Issuance conditions and term.

No license shall be issued under this Article if the Department shall find:

(A) that the operation of the massage establishment as proposed by the applicant, if permitted, would not comply with the applicable laws of the State of Illinois and the City of Chicago, including but not limited to the building, health, housing, fire prevention and zoning codes of the City of Chicago; or

(B) that the applicant or any other person who shall be directly or indirectly engaged in the management and operation of the massage establishment has been found to have violated Section 4-6-320(c)(1)(C) or (E); former Section 4-92-047(c) or (e); or has been convicted of (a) any offense involving sexual misconduct with children, or (b) any provision of 720 ILCS 5/10-9 or Article 11 of Chapter 720 of the Illinois Compiled Statutes, or (c) any other felony unless upon request of such person, the Commissioner determines that such person has been substantially rehabilitated to warrant the public trust. The burden of such substantial rehabilitation shall be on the person seeking such rehabilitation. The rehabilitation procedure shall apply only to subsection (B) of this section; or

(C) that the operation of the massage establishment as proposed by the applicant, if permitted, would violate the provisions of this Article.

(4) Fee.

The fee for each license issued pursuant to this article shall be as set forth in Section 4-5-010 of this Code.

(c) *Legal duties.* Any licensee engaged in the business of massage establishments and massage services shall have a duty to abide by the following:

(1) Operating Requirements

(A) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated under sanitary conditions.

(B) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers or provided to prospective customers as a written price list.

(C) (i) All massage establishments shall require their employees, agents and independent contractors to wear clean, nontransparent outer garments covering their sexual and genital areas

while on the premises, and no massage establishment shall allow its employees, agents, and independent contractors to disrobe, or offer or agree to disrobe, either wholly or partially, while on the premises. Any such failure to be or remain clothed, or offer or agreement to disrobe, is a violation of this article for which the licensee is strictly liable for purposes of license revocation and suspension. (ii) The sexual or genital areas of all customers shall be covered at all times when in the presence of an employee, agent, or independent contractor; provided, however, that such areas may be uncovered during clinical massage therapy for post-mastectomy scar tissue, including myofascial release therapy, or of therapeutic treatment of breast tissue and muscles for pre- and post-surgical mastectomy, lumpectomy, or breast reconstruction; clinical perineal massage therapy for pregnant women to ease the pain of childbirth; or clinical lower abdominal massage therapy to relieve menstruation-related pain.

(D) All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner.

(E) No massage establishment shall allow its employees, agents and independent contractors to touch, or offer or agree to touch, the sexual or genital area of any person while on its premises and any such touching, offer or agreement is a violation of this article for which the licensee is strictly liable for purposes of license revocation and suspension; provided, however, that clinical massage therapy practices for post-mastectomy scar tissue, including myofascial release therapy, or of therapeutic treatment of breast tissue and muscles for pre- and post-surgical mastectomy, lumpectomy, or breast reconstruction; clinical perineal massage therapy for pregnant women to ease the pain of childbirth; and clinical lower abdominal massage therapy to relieve menstruation-related pain are not prohibited.

(F) All walls, ceilings, floors, pools, showers, baths and steam rooms and any other physical facilities shall be in good repair, and maintained in a clean and sanitary condition.

(G) Oils, creams, lotions and other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(H) All licensees shall maintain, as a business record of the licensed massage establishment, a record of (i) the date and time of all massage services at the premises, (ii) the person giving such services,

and (iii) the amounts received for such services. The record of the date, time and service provider must be made before services are initiated and the record of the amount received must be made at the time payment is made. Such a record for the past year's services shall be available at the premises, in a format that can be inspected at any reasonable time upon request of the Commissioner.

(I) All massage establishments are required to have and maintain clear glass, which is not painted over, darkened or blocked by any cloth or obstruction, at the entrance to such establishment so that the front area where patrons are greeted is visible from the outside. A massage establishment located in a facility that does not have glass on the front of the premises is required to notify the Department in writing.

(J) No Licensee, manager, or person in charge of a massage establishment shall permit a person under the influence of intoxicating liquor or narcotic drugs to enter or remain in a massage establishment, or to provide or receive a massage.

(K) It shall be unlawful for any massage establishment to have any entrance or exit way providing a direct passageway to any residence.

(L) A sign shall be posted in a prominent location near the main entrance of the massage establishment identifying the establishment as a massage therapy establishment and stating its trade or business name as it appears on its permit application.

(M) Every massage establishment shall provide prospective customers with written notice stating:

State law prohibits soliciting another for the purpose of a sexual act. Solicitation can be punishable as a Class 4 felony, subjecting an offender to fines and imprisonment, and impoundment of any vehicle used by the offender to commit the offense. We immediately report all offers or requests to buy sexual services to law enforcement.

(2) Premises.

(A) No massage establishment shall receive a license or be operated, established or maintained unless the establishment shall comply with each of the following minimum regulations:

(i) All massage tables, lavatories and floors shall have surfaces which may be readily disinfected.

(ii) Toilet facilities shall be provided within the massage establishment, or within the facility that includes the massage establishment and otherwise complies with occupancy requirements. Lavatories shall be provided with both hot and cold running water and shall be installed in the toilet room. Lavatories shall be provided with soap and a dispenser with sanitary towels. Toilet facilities available for public use at Chicago O'Hare and Chicago-Midway International Airports shall be considered as compliance with the toilet facilities requirement of this section by a massage establishment located within either airport.

(iii) Closed cabinets shall be provided for use in the storage of clean linens, towels and other materials used in administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets which shall be kept separate from the clean storage areas.

(B) Subsections (A)(ii) and (A)(iii) of this section shall not apply to a massage establishment where all massages are administered to patrons who are fully clothed and without the application of oils, creams, lotions or other liquids to the body of any patron.

(3) Employment of licensed massage therapists.

(A) Massage establishments may not employ or contract with any person as a massage therapists who does not hold a current, valid license issued by the Illinois Department of Financial and Professional Regulation, as required by the Massage Licensing Act, 225 ILCS 57, et seq., which license may not have been suspended, revoked, or temporarily suspended by the Department under that Act. Upon receiving notice or constructive notice that a massage therapist has been disciplined, or is subject to investigation, by the Department, it is the affirmative responsibility of the licensee to obtain information from the Department as to the status of that investigation, disciplinary proceeding, or discipline imposed.

(B) Each massage establishment shall maintain a current listing of all licensed massage therapists who perform massage services at the site of the establishment and proof of their valid and current Illinois licensure in the form of (1) a copy of the massage

therapist license issued by the Illinois Department of Financial and Professional Regulation and (2) a copy of a state-issued photo identification for each massage therapist licensee. The massage establishment must allow inspection of such records at any reasonable time upon request of the Commissioner.

(C) No licensee may allow a non-licensed massage therapist to perform massage therapy at the massage establishment, and no student or other unlicensed person may be permitted in a massage therapy room with a patron of the massage establishment, except where a licensed massage therapist is present in the room at all times.

(4) License – Display.

Each licensee shall display a valid current license in a conspicuous place within the massage establishment so that the same may be readily seen by persons entering the establishment.

(5) Advertising.

All advertisements shall contain the number of the city license held by the massage establishment.

(d) *Prohibited acts.* It shall be unlawful for any licensee engaged in the business of massage establishments and massage services to:

(1) depict, place, publish, distribute or cause to be depicted, placed, published or distributed any advertising matter that suggests to prospective patrons that any services are available that would constitute a felony or misdemeanor under federal, state or city law or would otherwise violate the Municipal Code of the City of Chicago;

(2) employ any person who is not at least 18 years of age, with the exception of any licensed massage therapist whose age is regulated by the Illinois Massage Licensing Act;

(3) transfer a license for the operation of a massage establishment.

(e) *Penalty.*

(1) Violation – License suspension or revocation.

Any license issued for a massage establishment may be revoked or suspended by the Commissioner after a hearing, for a good cause. Cause for

revocation or suspension shall include any violation of the provisions of this article or of any criminal statute of the State of Illinois by the licensee, or by any employee, partner, agent or independent contractor of the licensee while at the massage establishment. For purposes of massage establishment license revocation and suspension, the licensee shall be strictly liable for such violations, regardless of actual or constructive knowledge. It shall also be cause for revocation or suspension that the applicant has made a false statement on any application for license under this article, or that the licensee shall have violated any of the provisions of this Code or any of the statutes of the state, or that the licensee refused to permit any authorized member of the Department, Police Department, Department of Buildings, Department of Health, or Fire Department of the City of Chicago to inspect the premises or the operations thereof at reasonable times.

When any license shall have been revoked for any cause, no license shall be granted to any person for the period of two years thereafter for the conduct of a massage establishment in the premises described in such revoked license, and no massage establishment license shall be granted, and any massage establishment license may be revoked or suspended, for any other premises in the city with respect to the person whose license was revoked for cause, for the period of two years thereafter. Such prohibition, revocation or suspension shall apply also to the spouse, business partner, or any person who holds more than a ten percent ownership interest in that licensee.

(2) Violation – Penalty.

Any person who violates any section of this Article shall upon conviction thereof be punished by a fine of not less than \$500.00 nor more than \$5,000.00 for each offense, and shall be punished as a misdemeanor for each subsequent offense by incarceration in the county jail for a term not to exceed six months under procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code, 65 ILCS 5/1-2-1.1, as amended, or by both fine and imprisonment except, however, that any violation of Section 4-6-320(c)(1)(B), (D), (E), or (F) shall be a misdemeanor punishable by incarceration in the county jail for a term not less than five days and not to exceed six months.

It shall be an affirmative defense to penalties under this article for an employee or massage therapist that the employee or massage therapist was under duress or was coerced into violating any provision of this article. A victim of trafficking in persons, pursuant to relevant state or federal laws, shall not be deemed criminally liable for any violation of this ordinance committed as a direct result of, or incident related to, being trafficked. Where such affirmative defense is applicable to an employee or massage therapist,

such affirmative defense shall not apply to the licensee if the licensee participated in creating such coercion or duress, or knew or should have known of the existence of such coercion or duress.

(f) *Regulation.*

The Department shall inspect each massage establishment seeking a license under the provisions of this article for purposes of determining compliance with this article. As a condition of issuance of such license, the massage establishment consents to walk-through inspections by authorized City employees and the Police Department, without notice, at any time during business hours. It shall be unlawful for any licensee to fail to allow such inspection officer access to the premises or to hinder such inspection officer in any manner.

SECTION 4. This ordinance shall be in full force and effect 90 days following passage and publication.

Matthew O'Shea
Alderman, 19th Ward